



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5372

by Rep. Michael P. McAuliffe

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.708 new

Creates the Retail Health Care Facility Permit Act and amends the State Finance Act. Authorizes the Department of Public Health to issue permits for the operation of retail health care facilities. Sets forth the requirements for a permit and the procedures for obtaining a permit. Sets forth requirements for the operation of retail health care facilities. Sets forth procedures in the case of a denial, suspension, revocation, or nonrenewal of a permit. Authorizes the assessment of civil monetary penalties against a permit holder for violations of the Act. Provides that a facility operating without a valid permit or operating on a revoked permit or operating without an operator on duty is guilty of committing a public nuisance, and provides that a person convicted of knowingly maintaining such a public nuisance is subject to criminal penalties. Creates the Retail Health Care Facility Permit Fund for use by the Department of Public Health in conducting activities relating to retail health care facilities. Effective June 1, 2008.

LRB095 16846 DRJ 42884 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning retail health care facilities.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Retail
5 Health Care Facility Permit Act.

6 Section 5. Legislative purpose. It is declared to be the
7 public policy of this State that the State has a legitimate
8 interest in assuring that health care services are performed
9 under circumstances that ensure maximum safety. Therefore, the
10 purpose of this Act is to provide for the better protection of
11 the public health through the development, establishment, and
12 enforcement of standards (i) for the care of individuals in
13 retail health care facilities and (ii) for the construction,
14 maintenance, and operation of retail health care facilities,
15 which will promote safe and adequate treatment of individuals
16 in retail health care facilities.

17 Section 10. Definitions. In this Act:

18 "Department" means the Illinois Department of Public
19 Health or another public health authority designated by the
20 Director as the Department's agent.

21 "Director" means the Director of Public Health or his or
22 her designee.

1 "Operator" means the person designated by a permit holder
2 to operate the facility.

3 "Retail health care facility" or "facility" means any
4 institution, place, or building, or any portion thereof,
5 devoted to the maintenance and operation of facilities for the
6 performance of health care services located within a retail
7 store or pharmacy at a specific location. The facility may not
8 provide surgical services or any form of general anesthesia.
9 The facility may not provide beds or other accommodations for
10 either long-term or overnight stay of patients, and individual
11 patients shall be discharged in an ambulatory condition without
12 danger to the continued well-being of the patients or shall be
13 transferred to a hospital. Hospitals, long-term care
14 facilities, ambulatory treatment centers, blood banks,
15 clinical laboratories, and offices of physicians, advanced
16 practice nurses, podiatrists, and physician assistants, as
17 well as pharmacies that provide pharmaceutical services, are
18 not to be construed to be retail health care facilities.

19 Section 15. Permit; fees; application.

20 (a) A permit issued by the Department shall be required
21 prior to the operation of any facility. The owner of the
22 facility shall file an application for a permit with the
23 Department on a form prescribed by the Department that shall
24 include at least the following information:

25 (1) Applicant's (owner's) name, address, and telephone

1 number.

2 (2) Name of the facility and its address and telephone
3 number.

4 (3) Nature of services to be provided at the facility.

5 (4) Primary function of the business in which the
6 facility is located.

7 (5) Operating procedures to be used in the facility.

8 (b) A fee established by rule, not to exceed the cost of
9 administration and enforcement of the permit program under this
10 Act, shall be submitted with the application to the Department.

11 (c) If a facility owner owns or operates more than one
12 facility, the owner shall file a separate application for each
13 facility owned or operated.

14 (d) Within 90 days after receipt of an application, the
15 Department's personnel shall complete the initial inspection
16 of the premises of the facility and ensure that the premises
17 and the facilities are or will be operated in accordance with
18 this Act.

19 (e) Upon submission of the application and the required
20 fee, and if the initial inspection of the premises indicates
21 that the premises and the facilities are or will be operated in
22 accordance with this Act, the Department shall issue a permit
23 to the owner.

24 (f) The permit issued by the Department shall be effective
25 for one year following the date of issuance. The Department may
26 stagger permit renewal dates on a quarterly basis with an

1 initial permit being effective for at least 9 months but not
2 more than 15 months. The permit shall be valid only for the
3 location and owner stated on the permit and is not
4 transferable.

5 (g) The permit shall be displayed in a place within sight
6 of the public when a member of the public enters the premises
7 of the facility.

8 (h) In the event of a change of ownership, the new owner
9 must apply for a permit to own and operate a facility prior to
10 taking possession of the property. A provisional license may be
11 issued by the Department until an initial inspection for a
12 permit can be performed by the Department.

13 Section 20. Permit renewal procedures; inspections.

14 (a) All permits issued by the Department under this Act
15 shall expire on a specified date and may be renewed by
16 submitting to the Department, at least 30 days before the
17 expiration date, a permit renewal application and the annual
18 renewal fee established by rule.

19 (b) The Department may refuse to renew the permit of any
20 owner or operator who has been found to be in violation of this
21 Act for the safe operation of facilities.

22 Section 25. Requirements for a permit.

23 (a) Every retail health care facility shall have policies
24 that ensure the following:

1 (1) All health care services provided must be in
2 accordance with a limited scope of services as determined
3 by the facility's medical director and approved by the
4 Department. These services shall be minor, with no invasive
5 or surgical care.

6 (2) No health care services may be provided at the
7 facility unless a physician licensed to practice medicine
8 in all its branches, an advanced practice nurse, or a
9 physician assistant is on the facility premises at the time
10 the services are provided.

11 (3) All health care services provided by an advanced
12 practice nurse shall be in accordance with the advanced
13 practice nurse's collaborative agreement with a physician
14 as required by Section 65-35 of the Nursing Practice Act. A
15 copy of collaborative agreement shall be maintained at the
16 facility. All health care services provided by a physician
17 assistant shall be in accordance with the written
18 guidelines established by the supervising physician or
19 physician/physician assistant team as required by Section
20 4 of the Physician Assistant Practice Act of 1987. A copy
21 of the written guidelines shall be maintained at the
22 facility.

23 (4) The facility must have a medical director who is a
24 physician licensed to practice medicine in all its branches
25 with active medical staff privileges to admit patients to a
26 local licensed hospital. A physician may be a medical

1 director of no more than 2 facilities.

2 (5) The facility must have a referral system to
3 physician practices or other health care entities
4 appropriate to the patient's condition for both follow-up
5 care and for symptoms outside the limited scope of services
6 provided by the facility.

7 (6) Collaboration of advanced practice nurses or
8 supervision of physician assistants shall not be construed
9 to necessarily require the presence of a collaborating or
10 supervising physician as long as methods of communication
11 are provided by the facility for immediate consultation
12 with the physician in person or by telecommunications for
13 collaboration on medical problems, complications,
14 emergencies, or patient referrals in accordance with
15 written protocols.

16 (b) All facility policies must meet the requirements of
17 this Act and the rules adopted by the Department to implement
18 this Act.

19 Section 30. Standards for issuance of permit. The Director
20 shall issue a permit under this Act only if he or she finds
21 that the applicant (i) complies with this Act, the rules
22 implementing this Act, and regulations adopted pursuant to the
23 Act and rules, (ii) is under the medical direction of one or
24 more physicians, and (iii) permits only a limited scope of
25 covered services approved by the Department.

1 Section 35. Operating requirements. Each facility shall
2 have on hand at all times an operator adequately trained in the
3 correct operation of the facility. The facility shall comply
4 with the requirements of Section 25 of this Act and the
5 following:

6 (1) The facility must be operated by a physician
7 licensed to practice medicine in all its branches, an
8 advanced practice nurse, or a physician assistant.

9 (2) All facility personnel must wear on their persons a
10 clearly visible identification indicating their
11 professional licensure status while acting in the course of
12 their duties.

13 (3) The facility must establish appropriate sanitation
14 and hygienic protocols and facilities, including, but not
15 limited to, refrigeration, hazardous waste disposal,
16 separate restrooms, and handwashing stations with running
17 hot water as determined by rule.

18 (4) The facility must operate under written protocols
19 approved by the medical director and the advanced practice
20 nurses or the physician assistants providing services at
21 the facility.

22 (5) The facility must have a designated receptionist
23 and waiting area.

24 (6) At the conclusion of each visit, each patient must
25 be given a written notice stressing the importance of

1 having a personal physician who can provide the full range
2 of health care services. Patients shall be notified in
3 writing of their opportunity to purchase medications from
4 any provider whenever they receive a prescription at a
5 facility.

6 (7) The facility must maintain medical records for all
7 patients for the period required of a licensed hospital
8 under the Hospital Licensing Act and State and federal law.

9 (8) The facility must provide notification of any
10 patient visits and outcomes to the patient's designated
11 physician. If no physician is designated, then
12 notification shall be made when a patient is referred to a
13 physician for follow-up care.

14 (9) Patients must be informed in writing of the
15 opportunity to purchase any medications, fill any
16 prescriptions, or seek any services from any provider not
17 affiliated with the facility or the store or pharmacy in
18 which it is located.

19 Section 40. Department standards; rules; regulations. The
20 Department shall adopt rules and regulations deemed necessary
21 for the proper regulation of retail health care facilities. At
22 a minimum, the rules and regulations shall include, but need
23 not be limited to, the following:

24 (1) Construction of the facility, including, but not
25 limited to, plumbing, heating, lighting, and ventilation

1 that will ensure the health, safety, comfort, and privacy
2 of patients and protection from fire hazards.

3 (2) Number and qualifications of all personnel,
4 including administrative and nursing personnel, having
5 responsibility for any part of the care provided to the
6 patients.

7 (3) Equipment essential to the health, welfare, and
8 safety of the patients.

9 (4) Facilities, programs, and services to be provided
10 in connection with the care of patients in a facility.

11 Initial rules shall be adopted by November 1, 2008.

12 Section 45. Prohibited locations. A retail health care
13 facility may not be located in any store or place that provides
14 alcohol or tobacco products for sale to the public.

15 Section 50. Nondiscrimination in co-payment, deductible,
16 or co-insurance requirement. No health insurer or health plan
17 or health maintenance organization that requires insureds or
18 enrollees to pay co-payments for services may discriminate
19 unreasonably against or among facilities or providers. Retail
20 health care facility services must be subject to the same
21 co-payment, deductible, or co-insurance requirements that are
22 required of an insured or enrollee in the case of services
23 provided by a physician, advanced practice nurse, or physician
24 assistant. Different co-payment requirements may be

1 established for out-patient and in-patient services.

2 Section 55. Denial, suspension, revocation, nonrenewal of
3 permits. A permit may be denied, suspended, or revoked, or the
4 renewal of a permit may be denied, for any of the following
5 reasons:

6 (1) Violation of any of the provisions of this Act or
7 the rules and regulations adopted by the Department under
8 this Act.

9 (2) Conviction of an applicant or permit holder for an
10 offense arising from false, fraudulent, deceptive, or
11 misleading advertising. The record of conviction or a
12 certified copy shall be conclusive evidence of the
13 conviction.

14 (3) Revocation of a permit during the previous 5 years,
15 or surrender or expiration of the permit during the
16 pendency of action by the Department to revoke or suspend
17 the permit during the previous 5 years. A controlling owner
18 or controlling combination of owners of the applicant; or
19 any affiliate of the individual applicant or controlling
20 owner of the applicant or affiliate of the applicant was a
21 controlling owner of the prior permit.

22 Section 60. Administration; enforcement.

23 (a) The Department may establish a training program for the
24 Department's agents who administer and enforce this Act.

1 (b) In administering and enforcing this Act, the Department
2 may designate and use full-time municipal, district, county, or
3 multiple-county health departments as its agents in
4 administering and enforcing of this Act and the rules adopted
5 under this Act.

6 Section 65. Investigation; hearing; notice. The
7 Department shall investigate an applicant or permit holder upon
8 the verified complaint in writing of any person setting forth
9 facts that if proven would constitute grounds for the denial of
10 an application for a permit, or for the refusal to renew a
11 permit, or for the revocation or suspension of a permit. The
12 Department may investigate an applicant or permit holder on its
13 own motion. The Department, after notice and an opportunity for
14 a hearing, may deny any application for, or suspend or revoke,
15 a permit or may refuse to renew a permit. Before denying an
16 application, refusing to renew a permit, or suspending or
17 revoking a permit, the Department shall notify the applicant in
18 writing. The notice shall specify the reasons for the
19 Department's contemplated action. The applicant or permit
20 holder must request a hearing within 10 days after receipt of
21 the notice. Failure to request a hearing within 10 days shall
22 constitute a waiver of the right to a hearing.

23 Section 70. Conduct of hearing.

24 (a) If an applicant or permit holder requests a hearing

1 under Section 65, the hearing shall be conducted by the
2 Director or by an individual designated in writing by the
3 Director as a hearing officer. The Director or hearing officer
4 may compel by subpoena or subpoena duces tecum the attendance
5 and testimony of witnesses and the production of books and
6 papers and may administer oaths to witnesses. The hearing shall
7 be conducted at a place designated by the Department. The
8 procedures governing hearings and the issuance of final orders
9 under this Act shall be in accordance with rules adopted by the
10 Department.

11 (b) All subpoenas issued by the Director or hearing officer
12 may be served as provided for in civil actions. The fees of
13 witnesses for attendance and travel shall be the same as the
14 fees for witnesses before the circuit court and shall be paid
15 by the party to the proceedings at whose request the subpoena
16 is issued. If a subpoena is issued at the request of the
17 Department, the witness fee shall be paid as an administrative
18 expense.

19 (c) In cases of refusal of a witness to attend or testify,
20 or to produce books or papers, concerning any matter upon which
21 he or she might be lawfully examined, the circuit court of the
22 county in which the hearing is held, upon application of any
23 party to the proceeding, may compel obedience by proceeding as
24 for contempt as in cases of a like refusal to obey a similar
25 order of the court.

1 Section 75. Findings of fact; conclusions of law; decision.
2 The Director or hearing officer shall make findings of fact and
3 conclusions of law in a hearing conducted under Section 70, and
4 the Director shall render his or her decision, or the hearing
5 officer his or her proposal for decision, within 45 days after
6 the termination of the hearing unless additional time is
7 required by the Director or hearing officer for a proper
8 disposition of the matter. A copy of the final decision of the
9 Director shall be served upon the applicant or permit holder in
10 person or by certified mail.

11 Section 80. Surrender of permit. Upon the revocation of a
12 permit, a permit holder shall be required to surrender the
13 permit to the Department, and upon his or her failure or
14 refusal to do so, the Department shall have the right to seize
15 the same.

16 Section 85. Review under Administrative Review law; venue;
17 costs. All final administrative decisions of the Department
18 under this Act shall be subject to judicial review under the
19 provisions of Article III of the Code of Civil Procedure. The
20 term "administrative decision" is defined as under Section
21 3-101 of the Code of Civil Procedure. Proceedings for judicial
22 review shall be commenced in the circuit court of the county in
23 which the party applying for review resides, except that if the
24 party is not a resident of this State, the venue shall be in

1 Sangamon County. The Department shall not be required to
2 certify any record or file any answer or otherwise appear in
3 any proceeding for judicial review unless the party filing the
4 complaint deposits with the clerk of the court the sum of \$0.95
5 per page, representing the costs of certification of the record
6 or file. Failure on the part of the plaintiff to make the
7 deposit shall be grounds for dismissal of the action.

8 Section 90. Administrative Procedure Act; application. The
9 provisions of the Illinois Administrative Procedure Act are
10 hereby expressly adopted and shall apply to all administrative
11 rules and procedures of the Department under this Act, except
12 that in case of conflict between the Illinois Administrative
13 Procedure Act and this Act the provisions of this Act shall
14 control, and except that Section 5 of the Illinois
15 Administrative Procedure Act relating to procedures for
16 rulemaking does not apply to the adoption of any rules required
17 by federal law in connection with which the Department is
18 precluded by law from exercising any discretion.

19 Section 95. Penalties. The Department may establish and
20 assess civil monetary penalties against a permit holder for
21 violations of this Act or regulations adopted under this Act.
22 In no circumstance may any such penalty exceed \$1,000 per day
23 for each day the permit holder remains in violation.

1 Section 100. Public nuisance.

2 (a) Any facility operating without a valid permit, or
3 operating on a revoked permit, or operating without an
4 operator, as defined in this Act, on duty constitutes a public
5 nuisance.

6 (b) A person convicted of knowingly maintaining a public
7 nuisance under this Act commits a Class A misdemeanor. A second
8 or subsequent offense under this subsection is a Class 4
9 felony.

10 (c) The Attorney General of this State or the State's
11 Attorney of the county in which the nuisance exists may
12 commence an action to abate the nuisance. The court, without
13 notice or bond, may enter a temporary restraining order or a
14 preliminary injunction to enjoin the defendant from operating
15 in violation of this Act.

16 Section 105. Advertising.

17 (a) Any facility may advertise the availability of
18 professional services in the public media or on the premises
19 where the professional services are rendered. The advertising
20 shall be limited to the following information:

21 (1) Publication of the facility's name, office hours,
22 address, and telephone number.

23 (2) Information pertaining to the professionals
24 providing services at the facility.

25 (3) Information on usual and customary fees for routine

1 professional services offered.

2 (4) Announcement of the opening of, change of, absence
3 from, or return to business.

4 (5) Announcement of additions to or deletions from
5 professional licensed staff.

6 (6) The issuance of business cards.

7 (b) It is unlawful for any facility with respect to which a
8 permit has been issued under this Act to use testimonials or
9 claims of superior quality of care to entice the public. It is
10 unlawful for a facility to advertise comparisons of its fees
11 for available services with the fees of other facilities with
12 respect to which a permit has been issued under this Act or
13 that are licensed or otherwise authorized to operate under any
14 other Illinois law.

15 (c) This Act does not authorize the advertising of
16 professional services that a facility is not authorized to
17 render, nor shall an advertiser use statements that contain
18 false, fraudulent, deceptive, or misleading material or
19 guarantees of success, statements that play upon the vanity or
20 fears of the public, or statements that promote or produce
21 unfair competition.

22 (d) It is unlawful and punishable under Section 95 for any
23 facility licensed under this Act to knowingly advertise that
24 the facility will accept as payment for services rendered by
25 assignment from any third party payor the amount the third
26 party payor covers as payment in full, if the effect is to give

1 the impression of eliminating the need of payment by the
2 patient of any required deductible or copayment applicable in
3 the patient's health benefit plan.

4 (e) As used in this Section, "advertise" means solicitation
5 by the permit holder or through another by means of handbills,
6 posters, circulars, motion pictures, radio, newspapers,
7 television, the Internet, or the World Wide Web, or in any
8 other manner.

9 Section 110. Retail Health Care Facility Permit Fund. There
10 is created in the State Treasury a special fund to be known as
11 the Retail Health Care Facility Permit Fund. All fees and
12 penalties collected by the Department under this Act, and any
13 federal funds collected pursuant to the administration of this
14 Act, shall be deposited into the Fund. The amounts deposited
15 into the Fund shall be appropriated by the General Assembly to
16 the Department for the purpose of conducting activities
17 relating to retail health care facilities under this Act.

18 Section 115. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 900. The State Finance Act is amended by adding
21 Section 5.708 as follows:

22 (30 ILCS 105/5.708 new)

1 Sec. 5.708. The Retail Health Care Facility Permit Fund.

2 Section 999. Effective date. This Act takes effect June 1,
3 2008.